

WD 34 2004

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DISTRICT COURT - SRBA  
TWIN FALLS CO. IDAHO  
FILED

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 39576

) Subcase No. 91-00005-34  
)  
) ORDER AMENDING PARTIAL  
) DECREE FOR GENERAL  
) PROVISIONS IN ADMINISTRATIVE  
) BASIN 34 TO INCLUDE GENERAL  
) PROVISION 7 ON CONNECTED  
) SOURCES  
)

I.

PROCEDUAL BACKGROUND

A. On May 9, 2001, Judge Burdick, then presiding, issued an *Order of Partial Decree for General Provisions in Basin 34*. The *Partial Decree* decreed recommended general provisions 1-6 as modified by stipulation of the parties to subcase 91-00005-34. The Director also recommended a General Provision 7 which dealt with the conjunctive administration of connected sources in the entire Snake River Basin.<sup>1</sup>

B. Recommended General Provision 7 was separated from subcase 91-00005-34 and consolidated with Basin-Wide Issue 5 which addressed conjunctive management for the entire Snake River Basin. See *Order of Consolidation/Separation of Issues (Realignment and Redesignation of Issues) of Basin-Wide Issues 5, 5A and 5B AOI § 11, Subcases 91-00005, 91-00005A and 91-00005B (In the future: 91-00005-34, 91-00005-36 and 91-00005-57) (Aug 31, 1999)*.

C. On February 27, 2002, Judge Burdick issued a *Partial Decree on Connected Sources (Conjunctive Management)*, which among other things modified the language

<sup>1</sup> The recommended provision provided: "All water rights within Basin 34 are from connected sources of water in the Snake River Basin and shall be administered conjunctively."

recommended in General Provision 7 in Basin 34 as well as for all other administrative basins, as follows:

Except as otherwise specified above, all other water rights within Basin \_\_\_\_\_ will be administered as connected sources of water in the Snake River Basin in accordance with the prior appropriation doctrine as established by Idaho law.

D. Pursuant to Basin-Wide Issues this general provision applied to all basins within the SRBA. Because the issue was not resolved at the time the general provisions for Basin 34 were initially decreed this language was not included in the *Order of Partial Decree for General Provisions in Basin 34*.

## II.

### ORDER

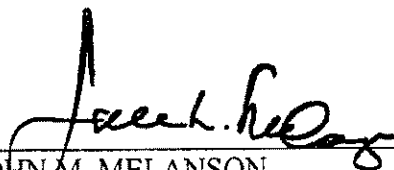
Because Basin-Wide Issue 5 is complete this Court finds it appropriate to now amend the general provisions for Basin 34 to include the general provision on connected sources rather than by a separate decree. Any opposition to the inclusion of this language was resolved in Basin-Wide Issue 5.

Therefore, IT IS ORDERED that the *Partial Decree* for the general provisions in Basin 34 is amended to include General Provision 7 as set forth in Exhibit A.

### RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED July 7, 2004.

  
JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication

### General Provisions 1-7 for Basin 34

The following general provisions apply to rights to water from Basin 34.

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1. The following definitions apply to these provisions:
  - a. The "Howell gage" is a stream gaging station on the Big Lost River located upstream from Mackay Reservoir in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ , Section 30, Township 8 North, Range 21 East, B.M.
  - b. The "2-B gage" is a stream gaging station on the Big Lost River located downstream from Mackay Dam in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ , Section 18, Township 7 North, Range 24 East, B.M.
  - c. Mackay Reservoir is "full" when the water surface elevation of the reservoir is at the spillway crest as it was configured on November 19, 1987.
  - d. The "Back Channel" separates from the main channel of the Big Lost River in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ , Section 5, Township 8 North, Range 22 East, B.M.
  - e. "Basin 34" refers to IDWR Administrative Basin 34 as it is described in the Amended Director's Report Part 1 for Reporting Area 1 (Basin 34) dated December 15, 1995.
  - f. As used in these provisions the term "water rights" refers to water rights as decreed in the case In Re SRBA, Fifth Judicial District Court Case No. 39576.
2. During the time period from November 1 of each year to the beginning of the next irrigation season (the "non-irrigation period"), all or a portion of the water of the Big Lost River flowing into Mackay Reservoir may be diverted, according to priority, for storage under water rights nos. 34-00012 and 34-10873 provided the natural flow at the 2-B gage is not less than fifty cubic feet per second. During the non-irrigation period, natural flow water rights downstream of Mackay Dam and senior in priority to water rights numbers 34-00012 and 34-10873 may be diverted for domestic and livestock uses under water rights authorized for these purposes.
3. Water rights from the Big Lost River diverted below Mackay Dam and Reservoir may be rotated into storage with the consent of the Big Lost River Irrigation District when such practice improves the efficiency of water use.

Such rotation is subject to the following conditions and review and approval by the Director of the Idaho Department of Water Resources.

- a. Water may only be rotated into storage if it will be beneficially used at the place of use under the water right during the year in which it is stored.
  - b. Rotation into storage cannot occur prior to the reasonable need for irrigation water.
  - c. Rotation into storage can only occur when the water is otherwise deliverable to the place of use under the water right.
  - d. The diversion rate of water rights being rotated into storage shall be included in the calculation of total combined diversion rate limitations.
  - e. If the reservoir fills after water has been rotated into storage, all water in the reservoir at the time it fills becomes storage water of the Big Lost River Irrigation District.
  - f. Any water stored under such rotation that is not used in the same irrigation season in which it is stored shall become storage water of the Big Lost River Irrigation District at the end of the irrigation season.
  - g. When the river is connected as specified in General Provision No. 6, while a right is rotated into storage, it is subordinate to all rights diverted above Mackay Reservoir with a priority date earlier than October 1, 1936.
4. The Back Channel is a natural channel of the river that has been historically regulated to a maximum of 200 cubic feet per second to provide irrigation water. This provision shall not be considered to enlarge the amount of water to which appropriators diverting from the Back Channel are entitled.
  5. The following surface water rights from the following sources of water in Basin 34 shall be administered separately from all other surface water rights in Basin 34:

SEE ATTACHMENT A

6. The following surface water rights from the Big Lost River and its tributaries upstream of Mackay Reservoir shall be administered separately

from all other non-storage, surface water rights from the Big Lost River downstream of Mackay Reservoir during two periods of time as follows:

- a. From the beginning of the irrigation season until the time on the rising stage of the Big Lost River when the maximum flow at the Howell gage reaches at least 750 cubic feet per second at any time for three consecutive days; and
- b. After the time on the falling stage of the Big Lost River when the minimum flow recedes to no more than 450 cubic feet per second at any time for three consecutive days until the end of the irrigation season.
- c. For purposes of determining the amount of water being supplied to Mackay Reservoir from curtailment of diversions upstream from the reservoir, measurements will be made on the Big Lost River at the Pense Bridge located in the T 8 N, R 23 E, S 30, SW  $\frac{1}{4}$  NE  $\frac{1}{4}$ , and on the Donahue Bridge on Parsons Creek located in the T 8 N, R 22 E, S 24, SW  $\frac{1}{4}$  SE  $\frac{1}{4}$ . These measurements will be used by the Watermaster to make futile call determinations.

#### SEE ATTACHMENT B

7. Except as otherwise specified above, all other water rights within Basin 34 will be administered as connected sources of water in the Snake River Basin in accordance with the prior appropriation doctrine as established by Idaho law.

# ATTACHMENT A

## WATER SOURCE: BADDY CREEK

34-00002  
34-02508  
34-13565

## WATER SOURCE: CEDAR CREEK

34-00834  
34-00835  
34-00839  
34-02303

## WATER SOURCE: ELKHORN CREEK

34-00766

## WATER SOURCE: GRANT CREEK

34-00769  
34-02245

## WATER SOURCE: LEHMAN CREEK

34-00472  
34-04068

## WATER SOURCE: LOWER CEDAR CREEK

34-00146  
34-00153  
34-00175  
34-00543  
34-00582  
34-00585  
34-00586  
34-00808  
34-00884  
34-00885  
34-00886  
34-10434  
34-10435

## WATER SOURCE: PINTO CREEK

34-00341

## WATER SOURCE: ROCK CREEK

34-00057

34-00058  
34-00836  
34-04039  
34-10585

## WATER SOURCE: ROCK SPRINGS CREEK

34-00352

## WATER SOURCE: SAGE CREEK

34-00334  
34-00335  
34-00336

## WATER SOURCE: UPPER CEDAR CREEK

34-10538  
34-12399

## WATER SOURCE: WILLOW CREEK

34-00057  
34-00058

## ATTACHMENT B

### Big Lost River and Tributaries Above Mackay Dam

#### WATER SOURCE: BARTLETT CREEK

34-00056

#### WATER SOURCE: BIG LOST RIVER

34-00004	34-00220	34-00561	34-00760
34-00024	34-00221	34-00562	34-00764
34-00025	34-00222	34-00563	34-00767
34-00026	34-00252	34-00566	34-00768A
34-00030	34-00290A	34-00567	34-00768B
34-00048	34-00290B	34-00568	34-00770
34-00054	34-00291A	34-00573A	34-00771
34-00055A	34-00291B	34-00573B	34-00772
34-00055B	34-00292A	34-00583B	34-00774
34-00084A	34-00292B	34-00583C	34-00775
34-00084B	34-00293A	34-00584D	34-00805
34-00097	34-00293B	34-00584F	34-00859A
34-00099	34-00294A	34-00626B	34-00860A
34-00103	34-00294B	34-00627B	34-00867
34-00125A	34-00297A	34-00628B	34-00868
34-00125B	34-00297B	34-00629B	34-10164
34-00139	34-00298A	34-00630B	34-10165
34-00145	34-00324A	34-00693	34-10166
34-00147B	34-00324B	34-00694	34-10227
34-00147C	34-00325A	34-00699A	34-10228
34-00147D	34-00338	34-00699B	34-10229
34-00148B	34-00339	34-00699C	34-10250
34-00148C	34-00340	34-00700A	34-10282
34-00148D	34-00344	34-00700C	34-10557
34-00151	34-00346	34-00701A	34-10558
34-00152	34-00347	34-00701C	34-10563
34-00154	34-00348	34-00702A	34-10567
34-00155	34-00349	34-00702B	34-10568
34-00156	34-00351	34-00702C	34-10587
34-00158	34-00363	34-00734	34-10619
34-00161A	34-00364	34-00735	34-10688
34-00162A	34-00421	34-00742	34-10920
34-00162B	34-00454	34-00743	34-13566
34-00208A	34-00455	34-00755	
34-00208B	34-00456	34-00757	
34-00211	34-00535	34-00758	

WATER SOURCE: BIG LOST RIVER, EAST FORK

34-00625  
34-00662

WATER SOURCE: BIG LOST RIVER, NORTH FORK

34-00053A  
34-00053B  
34-00053C  
34-00053D  
34-00053E  
34-13550

WATER SOURCE: BIG LOST RIVER AND PARSONS CREEK

34-00142  
34-00564  
34-00565  
34-00611B  
34-00612B  
34-00613B  
34-00626A  
34-00627A  
34-00628A  
34-00629A  
34-00630A  
34-00773  
34-10553

WATER SOURCE: BIG LOST RIVER, PARSONS CREEK AND POLE  
STACKYARD CREEK

34-00812  
34-00813  
34-00815  
34-00816  
34-00867

WATER SOURCE: BOONE CREEK AND FOX CREEK

34-00529

WATER SOURCE: BRADSHAW SPRINGS

34-00128A  
34-10620

WATER SOURCE: DEER CREEK

34-00624

WATER SOURCE: GARDEN CREEK

34-07010

WATER SOURCE: HAMILTON SPRINGS

34-00398

34-00399

34-07034

WATER SOURCE: HOWELL SPRING

34-00337

WATER SOURCE: LONE CEDAR CREEK

34-02144

WATER SOURCE: NAVARRE CREEK

34-00081

34-00820

34-00821

WATER SOURCE: NEWTON CREEK

34-07005

WATER SOURCE: PARSONS CREEK

34-00443  
34-00444  
34-00445  
34-00611A  
34-00612A  
34-00613A  
34-00801  
34-00802

WATER SOURCE: PARSONS CREEK AND POLE STACKYARD CREEK

34-10801

WATER SOURCE: POISON SPRING

34-07124

WATER SOURCE: RIDER CREEK

34-04001

WATER SOURCE: SPRING

34-00337  
34-04019  
34-04137  
34-07124  
34-10168  
34-10251

WATER SOURCE: SPRINGS

34-10635

WATER SOURCE: THOUSAND SPRINGS CREEK

34-04127  
34-10167

WATER SOURCE: UNNAMED STREAM

34-04005A  
34-04005B

WATER SOURCE: WARM SPRINGS CREEK

34-00123A  
34-00123B  
34-00124A  
34-00124B  
34-00236  
34-00237  
34-00251  
34-00353  
34-00420  
34-00457  
34-00458  
34-00467  
34-00468  
34-00469  
34-00470A  
34-00471  
34-00483A  
34-00483B  
34-00527  
34-00528  
34-00703A  
34-00703B  
34-00703C  
34-00704A  
34-00704B  
34-00704C  
34-00803  
34-00861A  
34-00861B  
34-00869  
34-00870  
34-00871  
34-10919  
34-13564

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER AMENDING PARTIAL DECREE FOR GENERAL PROVISIONS IN ADMINISTRATIVE BASIN 34 was mailed on July 07, 2004, with sufficient first-class postage to the following:

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